

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-SVxz-19 [v.4] (05/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Modernize Sales Tax on Accommodations. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MODERNIZE THE APPLICATION OF THE SALES TAX ON
ACCOMMODATIONS BY RECOGNIZING THAT THE SALES PRICE IS THE PRICE
PAID BY THE CONSUMER REGARDLESS OF WHETHER IT IS PAID TO THE
ACCOMMODATIONS PROVIDER OR A THIRD PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.4(a)(3) reads as rewritten:

"§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is five and three-quarters percent (5.75%).

...

(3) ~~Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.~~

~~As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable. A tax at the general rate applies to the sales price of the rental of an accommodation to a transient and to other gross receipts derived from the rental of an accommodation to a transient. The sales price of the rental of an accommodation to a transient is determined as if the rental were a service. An "accommodation" is a hotel room, a motel room, a residence, a cottage, or a similar space for occupancy by an individual. The tax does not apply to a residence or a cottage that is rented for less than 15~~

1 days in a calendar year or to an accommodation provided to the same person
2 for a period of 90 or more continuous days.

3 A person who provides an accommodation to a transient is considered a
4 retailer under this Article. A person who, by written contract, agrees to be
5 the rental agent for the provider of an accommodation is considered a retailer
6 under this Article and is liable for the tax imposed by this subdivision. The
7 liability of a rental agent for the tax imposed by this subdivision relieves the
8 provider of the accommodation from liability. A rental agent includes a real
9 estate broker, as defined in G.S. 93A-2.

10 A person who, by written contract, is not the rental agent of the provider
11 of an accommodation but is authorized by the provider to facilitate the rental
12 of the accommodation and to charge a transient for the rental is considered a
13 retailer under this Article for the purpose of determining the sales price of
14 the accommodation. Accordingly, charges designated as facilitation fees or
15 similar fees are considered charges necessary to complete the rental of the
16 accommodation and are included in the sales price. A person who enters
17 into a contract with the provider of an accommodation to a transient to
18 facilitate the rental of an accommodation must report the sales price to the
19 provider of the accommodation. The provider must remit tax on the sales
20 price reported by the facilitator. A facilitator is not liable for tax due on the
21 sales price reported to the provider. A facilitator that does not report the
22 sales price to the provider or that understates the sales price reported to the
23 provider is liable for tax due on the unreported or underreported sales price."

24 **SECTION 2.** G.S. 105-164.4B is amended by adding a new subsection to read:

25 "(e) Accommodations. – The rental of a transient accommodation is sourced to the
26 location of the accommodation."

27 **SECTION 3.** G.S. 153A-155(c) reads as rewritten:

28 "(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on
29 and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as
30 part of the charge for furnishing a taxable accommodation. A person who is required to remit to
31 the Department of Revenue the State sales tax on accommodations imposed by G.S. 105-
32 164.4(a)(3) is required to remit a room occupancy tax to the taxing county on and after the
33 effective date of the levy of the room occupancy tax. The room occupancy tax applies to the
34 same gross receipts as the State sales tax on accommodations and is calculated in the same
35 manner as that tax. A rental agent or a person who facilitates the rental of an accommodation
36 has the same responsibility and liability under the room occupancy tax as the rental agent or
37 facilitator has under the State sales tax on accommodations.

38 If a taxable accommodation is furnished as part of a package, the bundled transaction
39 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
40 accommodation. If those provisions do not address the type of package offered, the operator
41 person offering the package may determine an allocated price for each item in the package
42 based on a reasonable allocation of revenue that is supported by the operator's person's business
43 records kept in the ordinary course of business and collect calculate tax on the allocated price
44 of the taxable accommodation.

45 The tax shall be stated and charged separately from the sales records and shall be paid by
46 the purchaser to the operator of the business. The provider of an accommodation must
47 separately state the room occupancy tax. Room occupancy taxes paid to a provider of an
48 accommodation are paid to the provider as trustee for and on account of the taxing county. The
49 tax shall be added to the sales price and shall be passed on to the purchaser instead of being
50 borne by the operator of the business.

1 The taxing county shall ~~design, print, design~~ and furnish to all appropriate businesses and
2 persons in the county the necessary forms for filing returns and instructions to ensure the full
3 collection of the tax. ~~An operator of a business~~ A provider of accommodations who collects a
4 room occupancy tax may deduct from the amount remitted to the taxing county a discount
5 equal to the discount the State allows the ~~operator~~ provider for State sales and use tax."

6 **SECTION 4.** G.S. 153A-155(g) reads as rewritten:

7 "(g) Applicability. – Subsection (c) of this section applies to all counties that levy an
8 occupancy tax. To the extent subsection (c) conflicts with any provision of a local act,
9 subsection (c) supersedes that provision. The remainder of this ~~This~~ section applies only to
10 Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
11 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
12 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell,
13 Montgomery, Nash, New Hanover, New Hanover County District U, Northampton,
14 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
15 Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson
16 Counties, to Surry County District S, to Watauga County District U, to Yadkin County District
17 Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing
18 District."

19 **SECTION 5.** G.S. 160A-215(c) reads as rewritten:

20 "(c) Collection. – ~~Every operator of a business subject to a room occupancy tax shall, on~~
21 ~~and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as~~
22 ~~part of the charge for furnishing a taxable accommodation. A person who is required to remit to~~
23 ~~the Department of Revenue the State sales tax on accommodations imposed by G.S. 105-~~
24 ~~164.4(a)(3) is required to remit a room occupancy tax to the taxing city on and after the~~
25 ~~effective date of the levy of the room occupancy tax. The room occupancy tax applies to the~~
26 ~~same gross receipts as the State sales tax on accommodations and is calculated in the same~~
27 ~~manner as that tax. A rental agent or a person who facilitates the rental of an accommodation~~
28 ~~has the same responsibility and liability under the room occupancy tax as the rental agent or~~
29 ~~facilitator has under the State sales tax on accommodations.~~

30 If a taxable accommodation is furnished as part of a package, the bundled transaction
31 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
32 accommodation. If those provisions do not address the type of package offered, the ~~operator~~
33 person offering the package may determine an allocated price for each item in the package
34 based on a reasonable allocation of revenue that is supported by the ~~operator's~~ person's business
35 records kept in the ordinary course of business and ~~collect~~ calculate tax on the allocated price
36 of the taxable accommodation.

37 ~~The tax shall be stated and charged separately from the sales records and shall be paid by~~
38 ~~the purchaser to the operator of the business. The provider of an accommodation must~~
39 ~~separately state the room occupancy tax. Room occupancy taxes paid to a provider of an~~
40 ~~accommodation are paid to the provider as trustee for and on account of the taxing city. The tax~~
41 ~~shall be added to the sales price and shall be passed on to the purchaser instead of being borne~~
42 ~~by the operator of the business.~~

43 The taxing city shall ~~design, print, design~~ and furnish to all appropriate businesses and
44 persons in the city the necessary forms for filing returns and instructions to ensure the full
45 collection of the tax. An operator of a business who collects a room occupancy tax may deduct
46 from the amount remitted to the taxing city a discount equal to the discount the State allows the
47 ~~operator~~ provider for State sales and use tax."

48 **SECTION 6.** G.S. 160A-215(g) reads as rewritten:

49 "(g) Applicability. – Subsection (c) of this section applies to all cities that levy an
50 occupancy tax. To the extent subsection (c) conflicts with any provision of a local act,
51 subsection (c) supersedes that provision. The remainder of this ~~This~~ section applies only to

1 Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia,
2 Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir,
3 Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville,
4 Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of
5 Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina
6 Beach, Carrboro, Cramerton, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach,
7 Leland, McAdenville, Mooresville, Murfreesboro, North Topsail Beach, Pilot Mountain, Ranlo,
8 Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville
9 Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick
10 Counties."

11 **SECTION 7.** This act becomes effective January 1, 2011, and applies to gross
12 receipts derived from accommodations provided on or after that date.